



August 11, 1999

Mr. John Schromburger
Assistant Criminal District Attorney
Collin County Courthouse
210 S. McDonald, Suite 324
McKinney, Texas 75069

OR99-2268

Dear Mr. Schromburger:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126363.

Collin County (the "county") received a request for information "relating to all criminal cases against" certain named individuals. You claim that information responsive to the request is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We note initially that your request for a decision was not timely submitted to this office.

The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The documents you submitted to this office shows that the request for public information was sent via facsimile to the county on April 30, 1999. Your request for a decision from this office is postmarked May 17, 1999. As the county did not timely seek a decision, the requested information is presumed to be public. Gov't Code § 552.301, .302. You have, however, demonstrated that compelling reasons exist that the information at issue not be made public.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).


We believe the compilation of all offense reports of a named individual constitutes a criminal history of that individual. Criminal history record information ("CHRI") must be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation*.

In *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the United States Supreme Court concluded that where an individual's CHRI is compiled or summarized by a governmental entity, the information takes on a character that implicates an individual's right of privacy in a manner that the same individual records in an uncompiled state do not. Based on *Reporters Committee*, this office has concluded that a request for all law enforcement records of a specified individual implicates the individual's common-law privacy rights under section 552.101 of the Government Code

Thus, since the requestor seeks information as to criminal cases filed against the named individuals, any responsive information is excepted from disclosure.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

¹Because such information is protected from disclosure, we need not address your concerns about whether information may be released in light of an expunction order that may be implicated by this request.

Ref: ID# 126363

Encl. Submitted documents

cc: Mr. Mark Gilliam
P.O. Box 774
Glendale, Arizona 85311
(w/o enclosures)